


Michael. For the reasons which follow, the motion is due to be denied.

Count One of plaintiffs' complaint alleges that Walter Industries, Inc. ("Walter Industries") and its officers Kenneth Hyatt, Richard Almy and Robert Michael "owe a duty to supervise JWR and its employee and to require that JWR and its employees furnish the plaintiffs with a safe place to work." It further states that defendants "negligently, or wantonly, failed to cause the mines in which the plaintiffs are employed, or have been employed, to be reasonably safe places to work and, as a proximate consequence, the plaintiffs have been injured and damaged."

Under Alabama law, a parent corporation, such as Walter Industries, can only be held liable if the facts show that it was in "control or custody" of the workers' employment. See Proctor & Gamble Co. v. Staples, 551 So.2d 949 (Ala. 1989). Although the collective bargaining agreement between JWR and the United Mine Workers of America provides that the "management of the mine, the direction of the working force and the right to hire and discharge are vested exclusively in" JWR, plaintiffs have alleged that Walter Industries and its officers or employees exercised control over the job site and control over the manner in which the work was to be done. Given the allegations in the complaint, the Court cannot conclude beyond doubt that plaintiffs can prove no set of facts which would entitle them to relief.

Viewing the complaint in a light most favorable to plaintiffs, defendants' Walter Industries, Inc., Kenneth Hyatt, Richard Almy, and Robert Michael's motion to dismiss is denied.

DONE this 11th day of July 2000.



United States District Judge
U.W. Clemon